IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6102 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MADHABHAI MKOHANBHAI DECEASED BY HIS HEIRS

Versus

PURIBEN WIDOW OF LALDAS MOHANDAS DECEASED BY HIS HEIRS

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Appearance:

MR BJ JADEJA for Petitioners

MR AJ PATEL for Respondents

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/06/2000

ORAL JUDGEMENT

1. The petitioners challenge by this petition the order of the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A. 258 of 80, which arose out of an order passed by the Deputy Collector, Mehsana, in Tenancy Appeal No.910 of 1979 which, in turn, arose out of an order passed by Mamlatdar and Agricultural Lands

Tribunal, Mehsana in Tenancy Case No.181 of 1975, under Section 32F and 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act" for short).

2. The facts of the case, in brief, are that, the petitioners are the heirs and legal representatives of one Madhabhai Mohandas Patel (deceased). The respondents are the heirs and legal representatives of Puriben, widow of Laldas Mohandas. Laldas Mohandas and Madhabhai Mohandas were brothers.

2.1 The disputes spins around land bearing survey No.198 (now Block No.589), admeasuring 1 acre and 22 Gunthas of village Jornang. The land belonged to Laldas Mohandas and, in turn, came to Puriben. The said land was, at some point of time, cultivated by Madhabhai Mohandas, later on the possession was handed over to Puriben. There were tenancy proceedings by Case No.145 of 1959 in the Court of Agricultural Lands Tribunal and Mamlatdar, at Mehsana, wherein it was held that Madha Mohan cultivated the land in question in the year 1955-56 and 1956-57 and, in light of the statements of the tenant as well as the landlady, he was lawful tenant. But, as the landlady was a widow, action under Section 32G could not be carried further. Thereafter, Tenancy Case No.181 of 1975 was initiated by the heirs and legal representatives of Madhabhai Mohandas under Section 32F and 32G of the Tenancy Act in respect of the said property. The Mamlatdar and Agricultural Lands Tribunal accepted the case of heirs of Madhabhai Mohandas that Madhabhai was a tenant and that the applicants, being legal representatives, have become tenants. Price for the purchase of land was also fixed. A specific observation was also made that the land was not in possession of the tenants. The said order was carried in appeal by Puriben before the Deputy Collector, Mehsana, being Tenancy Appeal No.910 of 1979. The Deputy Collector accepted the appeal and observed that brother-in-law of Puriben cannot be accepted as tenant even if he has cultivated the land for some time. It was also observed that, if Madha Mohan had expired before 3.3.1973, the petitioners, i.e. the legal heirs of the tenant would not get any right. The Deputy Collector, therefore, quashed and set aside the order of the Tenancy Mamlatdar.

2.2 The said order was challenged before the Gujarat Revenue Tribunal by preferring Revision Application No.258 of 1980. Learned President of the Gujarat Revenue Tribunal did not accept the revision application after considering the case of the parties in detail. The

learned President agreed with the observations made by the Deputy Collector. He also made certain observations on factual part, after perusing the record. The said order dated the 27th December, 1985 was sought to be reviewed by heirs of Madha Mohan, by preferring Review Application No.TEN.C.A. 17/86. That review application was dismissed summarily by the learned President of the Gujarat Revenue Tribunal. Being aggrieved by the said orders, the heirs of Madha Mohan, the so called tenant, have preferred this petition.

3. Learned advocate, Mr. Jadeja, submitted that the authorities below have proceeded on a wrong premise. According to him, the case of the petitioners is not that of a deemed tenant or a statutory tenant. The case of the petitioners is that of a contractual tenant. He has drawn attention of this Court to the deposition of Bai Puri, wherein, in terms, she has stated that the deceased Madha Mohan was her tenant. Only the proceedings for fixation of price were not continued as the landlady was a widow. However, by virtue of the amendment in the law in 1973, the heirs of the tenant had a right which was recognized by the Tenancy Mamlatdar, but has been refused by the subsequent authorities. Mr. Jadeja submitted that the provisions of law referred to by these authorities would not be applicable to the facts of the present case. He urged that the petition may, therefore, be allowed.

4. On the other hand, the respondents are represented by learned advocate, Mr. A.J. Patel. He has opposed this petition vehemently. According to him, undue importance was given by the Tenancy Mamlatdar to the deposition of Bai Puri. Considering her age and the educational standard, it would not be proper to accept the deposition as per its literary and dictionary meaning. In common parlance, she may have stated that Madha Mohan was cultivating the land and, as per usual practice, he might be giving share to her. But he does not cease to be her brother-in-law. As in normal practice, family members do help any other family member in farming and other activities and, thereby, they do not acquire the status as tenants. These factors have been overlooked by the learned Tenancy Mamlatdar, but have been correctly accepted by the Deputy Collector as well as the learned President of Gujarat Revenue Tribunal. Mr. Patel submitted that there is concurrent finding of two authorities below and, as such, there is no case made out by the petitioners for extending any indulgence. He urged that the petition may, therefore, be dismissed.

5. Having regard to rival side contentions, it may be noted, at the outset, that, undisputedly, Bai Puri was a widow and her husband-Laldas Mohandas had expired long back.

6. Factually, there appears not any dispute about the fact that Madha Mohan had cultivated the land only during 1955-56 and 1956-57. The mode of cultivation is shown as No.3. But in 1957-58, the records indicate that the land was under cultivation of the landlord and the mode of cultivation was shown to be No. 2, which would mean that the owner was cultivating the land. The records also indicate that the said position continued upto 1962-63. From the year 1963-64 to 1966-67, the entry is of "self". In the year 1968-69, name of Bai Puri is written as Khedut and her name appears till 1974-75. In 1975-76, one pencil entry is made in name of Dharma Girdhar for two years. There is no dispute with Dharma Girdhar. This factual finding of the Tribunal is not in dispute. It is also not in dispute that, even today, the land is in possession of the respondents. The whole case of the petitioners, therefore, hangs on the question whether Madha Mohan was a contractual tenant as is asserted by the petitioners and, if so, what would be the status of the present petitioners. Reliance is placed on deposition of Bai Puri. In this regard, Bai Puri, in her deposition, has categorically stated that for two years prior to two years (from the date of her deposition), the land was given to Madha Mohan for cultivation on crop share basis. She states that he was her lawful tenant. Her land was not subject to sale as she was a widow. She was cultivating the land for last two years (from the date of her deposition) and the possession was relinquished by Madha Mohan voluntarily as she wanted to cultivate the land herself. Her deposition is recorded on the 19th July, 1959. If this is compared with the record, it is clear that Madha Mohan was cultivating the land for two years prior to two years of the deposition. That would be prior to 1957 and, thereafter, the land is under cultivation of the landlady herself, i.e. Bai Puri. The scope is, therefore, further narrowed down whether by her saying that Madha Mohan was her lawful tenant as the land was cultivated on crop share basis, Madha Mohan would become a contractual tenant, so as to bring him within the definition of a 'tenant' as contemplated under the Tenancy Law. In this regard, there is concurrent finding of two authorities below, namely, the Deputy Collector and the learned President of Gujarat Revenue Tribunal. They have taken into consideration these aspects and have come to conclusion that it cannot be so taken or accepted. It

also requires to be noted that Madha Mohan was younger of Bai Puri's husband and was, therefore, a family member.

7. This Court is, therefore, of the view that no error is committed by either the Deputy Collector or the learned President of Gujarat Revenue Tribunal and no interference is called for in factual findings. Under the circumstances, the petition must fail on merits. The petition is, therefore, dismissed. Rule is discharged. No costs.

[ A.L. DAVE, J. ]

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